

No. 19-71930

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

A COMMUNITY VOICE; CALIFORNIA COMMUNITIES AGAINST TOXICS;
HEALTHY HOMES COLLABORATIVE; NEW JERSEY CITIZEN ACTION;
NEW YORK CITY COALITION TO END LEAD POISONING; SIERRA CLUB;
UNITED PARENTS AGAINST LEAD NATIONAL; and WE ACT FOR
ENVIRONMENTAL JUSTICE,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; and
MICHAEL REGAN, as Administrator of the United States Environmental
Protection Agency,

Respondents.

On Petition for Review of a Final Rule
of the U.S. Environmental Protection Agency

**PETITIONERS' MOTION TO EXTEND JULY 12, 2021 DEADLINE
TO FILE MOTION FOR ATTORNEYS' FEES**

Dated: July 2, 2021

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Petitioners¹ respectfully request that the Court extend their deadline to file a motion for attorneys' fees by 90 days, until October 10, 2021. Counsel for Petitioners emailed counsel for Respondents U.S. Environmental Protection Agency and Administrator Michael Regan (together, "EPA") on June 29, 2021 and July 1, 2021, and left a voicemail on July 1, 2021, seeking EPA's position on this motion. To date, counsel for EPA has not responded to these communications. *See* 9th Cir. R. 27-1(2); 9th Cir. R. 27-1(5) Advisory Comm. Note.

In this petition for review, Petitioners challenged a rule issued by EPA updating the lead-based paint hazard standards. On May 14, 2021, the Court entered a final judgment granting the petition for review and remanding the EPA rule without vacatur. ECF No. 84-1 at 27.

ARGUMENT

Petitioners intend to seek attorneys' fees, expert fees, and non-taxable costs pursuant to TSCA Section 19(d). *See* 15 U.S.C. § 2618(d) (providing that a court may award "costs of suit and reasonable fees for attorneys and expert witnesses" in a suit brought under TSCA's judicial review provision "if the court determines that such an award is appropriate"). Because TSCA does not specify a deadline for

¹ Petitioners here are A Community Voice, California Communities Against Toxics, Healthy Homes Collaborative, New Jersey Citizen Action, New York City Coalition to End Lead Poisoning, Sierra Club, United Parents Against Lead National, and We Act for Environmental Justice.

requesting attorneys' fees, Petitioners' request must "be filed no later than 14 days after the expiration of the period within which a petition for rehearing may be filed, unless a timely petition for rehearing is filed." 9th Cir. R. 39-1.6(a); *see also EDF, Inc. v. EPA*, 672 F.2d 42, 61 (D.C. Cir. 1982) (explaining that "[t]here is no specific limitations period for the submission of attorneys' fees claims under section 19(d)" of TSCA). Here, no party filed a timely petition for rehearing before the June 28, 2021 deadline to do so. *See* Fed. R. App. P. 40(a)(1). Petitioners' motion for attorneys' fees is therefore due July 12, 2021. *See* 9th Cir. R. 39-1.6(a).

Petitioners seek an extension of this deadline by 90 days to October 10, 2021. Good cause supports such an extension given the complexity of this case, which involved a voluminous administrative record, extensive motion practice, multiple claims, and additional briefing after oral argument. In addition, the extension would serve the interests of judicial economy by providing Petitioners and EPA with more time to engage in settlement negotiations regarding attorneys' fees, potentially eliminating the need for a fees motion altogether. *See* Fed. R. App. P. 26(b). A 90-day extension is warranted to account for vacations and other conflicts that may arise over the summer.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court extend the deadline to file a motion for attorneys' fees by 90 days, until October 10, 2021.

Dated: July 2, 2021

Respectfully submitted,

s/Jonathan J. Smith
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